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L.C., I.H., A.L., and

ANTONIA SALAS UBALDO

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

L.C., a minor by and through her guardian *ad litem* Maria Cadena, individually and as successor-in-interest to Hector Puga; I.H., a minor by and through his guardian *ad litem* Jasmine Hernandez, individually and as successor-in-interest to Hector Puga; A.L., a minor by and through her guardian *ad litem* Lydia Lopez, individually and as successor-in-interest to Hector Puga; and ANTONIA SALAS UBALDO, individually;

Plaintiffs,

vs.

STATE OF CALIFORNIA; COUNTY OF SAN BERNARDINO; S.S.C., a nominal defendant; ISIAH KEE; MICHAEL BLACKWOOD; BERNARDO RUBALCAVA; ROBERT VACCARI; JAKE ADAMS; and DOES 6-10, inclusive,

Defendants.

Case No. 5:22-cv-00949-KK-SHK

Honorable Kenly Kiya Kato

Mag. Judge Shashi H. Kewalramani

**PLAINTIFFS' OPPOSITION TO
COUNTY DEFENDANTS' EX
PARTE APPLICATION FOR ONE
ADDITIONAL MOTION IN LIMINE**

1 **I. INTRODUCTION AND RELEVANT FACTS**

2 The officer-involved encounter and shooting death of Hector Puga on February
3 17, 2021, was captured on multiple video sources, at multiple angles. One such video
4 source was a nearby house’s surveillance camera, which produced a black-and-white
5 video of the shooting, showing Mr. Puga running away and the officers opening fire
6 on him, at an angle that no other video captures. County Defendants sought to extend
7 the fact discovery cut-off for the sole purpose of taking the deposition of the creator
8 of this video, “Sal,” contending that they would suffer “irreparable harm” if not
9 permitted to take Sal’s deposition because “Defendants’ experts will not have the
10 necessary information as to the origin of this video and any alterations made thereto
11 for the purposes of evaluating the credibility of this video from an evidentiary
12 standpoint.” (Doc. No. 95 at 4). County Defendants further argued that the video
13 needed to be authenticated by Sal because it appeared “altered” due to the video being
14 zoomed in and zoomed out at times, and County Defendants claiming that the audio
15 does not appear to be synced with the video images. (Doc No. 95 at 14).

16 Plaintiffs opposed County Defendants’ request to extend the fact discovery cut-
17 off to take Sal’s deposition, proffering that should the Court deny County Defendants’
18 request, County Defendants would not suffer prejudice because Plaintiffs did not
19 intend to use the video to establish the timeline of the shooting or contend that the
20 events shown on the event match up to the audio of the video. Despite this proffer, the
21 Court granted County Defendants’ Ex Parte Application, allowing County Defendants
22 to proceed with taking Sal’s deposition.

23 County Defendants now contend that Defendants were always under the
24 impression that Plaintiffs would not be using the surveillance video as part of
25 Plaintiffs’ trial evidence and that the video would be excluded from trial. This is
26 belied by the fact that County Defendants still attempted to take Sal’s (later identified
27 as Salvador Navarro Gurrola) deposition (*see* Exs. 1-2 to Le Decl. ISO Pls.’ Opp. to
28 Cnty. Defs.’ Ex Parte App.), and had their police practices expert, Ken Hubbs, review

1 the black-and-white surveillance video, from which he attempted to interpret the
2 video and relied on the video to form portions of his opinions contained in his initial
3 Rule 26 Report that was disclosed in January 30, 2025¹ (*see* Ex. D to Le Decl. ISO
4 Pls.’ MILs Nos. 1-5, Hubbs Report [Doc. No. 139-4] at 32, 77).

5 Additionally, the parties exchanged a list of contemplated motions in limine on
6 April 7, 2025. Included in both State Defendants’ and County Defendants’ lists was a
7 motion to exclude the black-and-white surveillance video. (*See* Exs. 3-4 to Le Decl.
8 ISO Pls.’ Opp. to Cnty. Defs.’ Ex Parte App). During the parties’ April 11, 2025 meet
9 and confer, Plaintiffs’ counsel indicated that there were several issues that could not
10 be resolved one way or the other at the meeting, including: (1) limiting photos of Mr.
11 Puga’s body and autopsy photos, of which Plaintiffs believed could be resolved in
12 Plaintiffs proposing a select number of photos during the parties’ exchange of exhibit
13 list; (2) excluding evidence of Antonia Salas Ubaldo’s wrongful death damages, of
14 which Plaintiffs’ counsel needed to get authority from Plaintiffs; and (3) excluding
15 the black-and-white “Sal” surveillance video, of which Plaintiffs’ counsel needed to
16 discuss with Plaintiffs’ lead trial counsel. (Le Decl. ISO Pls.’ Opp. to Cnty. Defs.’ Ex
17 Parte App. ¶ 6). Subsequently, when the parties exchanged exhibit lists on April 14,
18 2025, Plaintiffs’ counsel provided further updates and clarification on the outstanding
19 issues from the meet and confer, including Plaintiffs’ unwillingness to stipulate to
20 excluding the black-and-white surveillance video. (Le Decl. ISO Pls.’ Opp. to Cnty.
21 Defs.’ Ex Parte App. ¶ 7; *see* Ex. 5 to Le Decl.). Thus, contrary to County
22 Defendants’ claim, Plaintiffs’ unwillingness to stipulate to the exclusion of the black-
23 and-white surveillance video was never a “sudden reversal” of Plaintiffs’ position,
24
25

26
27 ¹ It should be noted that Mr. Hubbs does not question the credibility of the video and
28 instead, takes it at face value in interpreting the video and relying on it to form his
opinions.

1 and Plaintiffs should be allowed to present the black-and-white surveillance video as
2 part of the evidence at trial for the reasons discussed herein.

3 **II. GOOD CAUSE DOES NOT EXIST FOR THE COURT TO GRANT**
4 **DEFENDANTS' EX PARTE APPLICATION TO FILE A MOTION IN**
5 **LIMINE TO EXCLUDE THE BLACK AND WHITE SURVEILLANCE**
6 **VIDEO**

7 **A. The Video is Reliable and Can Be Authenticated at Trial**

8 County Defendants seem to contend that because the video appears to zoom in
9 and out at times, and claim that the sound is not synced to the images, that the video
10 must be authenticated by the creator of the video. However, the zooming in and
11 zooming out of the video does not materially alter what is depicted in the video and
12 Defendants do not provide any support for the contention that the sound is not synced
13 to the images on the video. When a video does not appear to be altered in any material
14 way, it does not need to be authenticated by the creator of the video; it may be
15 authenticated through other means, such as witnesses who have personal knowledge
16 of what is depicted in the video or other video and photographic evidence of the event
17 showing that the video in question is consistent with other recordings in evidence. *See*
18 *Fed. R. Evid. 901(b)(1), (3)* (allowing authentication by personal knowledge or by
19 “comparison with an authenticated specimen”); *Diaz v. Cnty. of Ventura*, 512 F. Supp.
20 3d 1030, 1035 (C.D. Cal. 2021) (third party YouTube video that did not appear
21 doctored in a material way, notwithstanding defendant’s conclusory conjecture that
22 they could be, could be authenticated because they appeared entirely consistent with
23 videos and photographs of the incident that have already been authenticated); *Bynes v.*
24 *Olmstead*, No. 2:21-CV-01537-DJC-AC, 2024 WL 3275662, at *6 (E.D. Cal. July 2,
25 2024) (recording at trial could be authenticated by witness testimony or by other
26 means); *Ian Merritt v. Jonathan Cogley*, No. 23CV1031-CAB-KSC, 2025 WL
27 1043546, at *3 (S.D. Cal. Apr. 8, 2025) (unavailability of the creator of the video for
28 authentication purposes did not mean the video could not be authenticated by
percipient witnesses to the depicted events). Here, there are a number of witnesses to

1 the incident and authenticated videos and photographs of the incident that may be
2 used to authenticate the black-and-white surveillance video. Additionally, while
3 County Defendants previously argued that Sal's deposition as needed to establish
4 reliability of the video for their experts, County Defendants' police practices expert
5 review and relied on the surveillance video, without Sal's deposition and without
6 taking issue with the reliability of the video. Thus, County Defendants' contention
7 that the black-and-white surveillance video lacks foundation and reliability is
8 unfounded.

9 **B. Plaintiffs are Entitled to Present Video that Captured the Shooting to**
10 **Support Their Claims**

11 County Defendants attempt to use Plaintiffs' proffer in their opposition to
12 Defendants' Ex Parte Application to extend the fact discovery cut-off to take Sal's
13 deposition to exclude the video. But Plaintiffs' proffer was made on the basis that the
14 Court deny Defendants' Ex Parte Application. County Defendants' subsequent
15 actions after the parties' briefing on this issue belies Defendants' claim that County
16 Defendants relied on this proffer to their detriment. Not only did County Defendants
17 try to take Sal's deposition, but they also had their police practices expert review and
18 rely on the video in forming his opinions. County Defendants' failure to follow up on
19 taking Sal's deposition when he failed to show up for his originally noticed deposition
20 date should not be faulted to Plaintiffs. Additionally, as discussed above, at no point
21 during the meet and confer process for the parties' motions in limine did Plaintiffs'
22 counsel agree to the exclusion of the black-and-white surveillance video. Thus, there
23 was no "sudden reversal" of position as County Defendants contend.

24 The surveillance video captures the moment of the shooting and the actions of
25 the involved officers and Mr. Puga. It is relevant to Plaintiffs' claims and Defendants'
26 defenses. Thus, Plaintiffs should be permitted to present this video to the jury to
27 support their claims.

28 //

C. The Video Provides Perspective that No Other Evidence Can Provide

Admission of this video at trial is more probative than prejudicial. This video undeniably captures the shooting at a different vantage point and angle than any other video and thus, may fill in the gaps of what occurred prior to and during the shooting. Even if the Court were to find that the syncing of the audio to the images in the video is unreliable, the images depicted in the video can still provide clarity as to the positions of the officers and Mr. Puga prior to and during the shooting. The video shows Mr. Puga's actions at the front of the vehicle, which is in dispute, and positions of the officers immediately prior to and during the shooting, which is in dispute. For example, one important aspect of this video is that it shows where the County Deputies were at the time of the initial shots, calling into question their claims that they were in a position to be able to allegedly see Mr. Puga reach down into his waistband and produce a gun prior to running. If this video is not admitted, County Deputies' claim regarding what they observed and when they observed it could not be challenged, despite there being evidence to do so, which would prejudice Plaintiffs' ability to fully present their case. Additionally, County Defendants' issues regarding the zooming in and out and audio syncing go to the weight of the evidence, not the admissibility of the evidence. Accordingly, this video should be admitted to be shown at trial.

III. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request the Court deny County Defendants' Ex Parte Application for One Additional Motion in Limine in its entirety.

DATED: April 18, 2025

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Bv /s/ Hang D. Le

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Certificate of Compliance

The undersigned, counsel of record for Plaintiffs L.C., I.H., A.L., and Antonia Salas Ubaldo, certifies that this brief contains 1,625 words, which complies with the word limit of L.R. 11-6.1.

DATED: April 18, 2025

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